No. 87-1682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

v.

CHRYSLER CORPORATION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENT CHRYSLER CORPORATION'S BRIEF IN OPPOSITION TO THE PETITION

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QUESTIONS PRESENTED

As viewed by respondent Chrysler Corporation, the instant petition presents the following questions:

1. Whether either the district court or the court of appeals was required to presume that there was a "genuine issue as to any material fact" which precluded summary judgment.

2. Whether after a district court has held that a limitations statute bars plaintiffs' asserted claims against a defendant and has entered summary judgment in favor of that defendant and a court of appeals, without agreeing in all respects with the district court's analysis of the limitations issue, correctly affirms that judgment on the additional grounds that defendant has not breached its contract upon which the plaintiffs' asserted claims were based and is otherwise entitled to judgment, there is any need for further review by this Court.

3. Whether after both a district court and a court of appeals have fully examined and considered plaintiffs' asserted claims and have rendered detailed and thorough decisions adverse to plaintiffs, this Court should be persuaded either by unsupported and unsupportable arguments or by meaningless arguments to permit further review and thereby unnecessarily to burden further its heavy docket.

PARTIES

The statement as to parties in the petition is correct and will not be repeated here. As of June 1, 1986, Chrysler Corporation's name was changed to Chrysler Motors Corporation; and it became a subsidiary of Chrysler Corporation.

Except where the context otherwise requires, petitioners will be referred to herein as "plaintiffs"; and respondent Chrysler will be referred to herein as either "defendant Chrysler" or "Chrysler."

Unless the context specifically requires separate designations, the union respondents will be referred to collectively herein as either "defendant Union" or "Union."

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OPINIONS BELOW

The opinion of a unanimous panel of the United States Court of Appeals for the Sixth Circuit is reported as *Chrysler Workers Association v. Chrysler Corp.*, 834 F.2d 573 (6th Cir. 1987), and has been printed in the appendix, at A 1.

The opinion of the United States District Court for the Northern District of Ohio, Western Division, was filed April 16, 1986, is published at 124 L.R.R.M. 2924 (BNA), and is printed in the appendix, at A 24.

STATUTES INVOLVED

The provisions quoted in the petition, at 2-5, exceed, but include some of, those which defendant Chrysler considers involved in determination of the petition as to it. Additionally involved are 29 U.S.C. §160(b) (1983), which reads in pertinent portion:

> *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

and 29 U.S.C. §411(a)(4) (1983), which reads in pertinent part:

> *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof. . . .

STATEMENT OF THE CASE

As to defendant Chrysler, the instant action is a so-called hybrid §301/fair representation action. 29 U.S.C. §185 (1983). As to defendant Chrysler, plaintiffs' action is supported by neither the facts nor the law.

In order to place the questions presented for review in proper perspective, it is necessary to review some facts from many years ago. Unfortunately, since plaintiffs' supposed statement of the case in their petition is only partially complete, this statement, for this additional reason, is longer than would normally be preferred. For the convenience of the Court, the facts covering this lengthy time span will generally be summarized in their approximate chronological order.

As the decade of the 1980's opened, the United States automobile industry had severe economic problems. It was then common information nationally that, of the big three American manufacturers, defendant Chrysler was suffering first and foremost.

Defendant International Union had long been the exclusive collective bargaining agent of the employees of defendant Chrysler, including plaintiffs. The basic governing collective bargaining agreement then in existence was dated October 25, 1979, and provided for its continuance until September 14, 1982.

The 1979 collective bargaining agreement, at 69-70, contained a section entitled "(65) Work Opportunity for Laid Off Employees." Under the terms of that section, an employee laid off at one Chrysler plant could at times undertake employment at another Chrysler plant. If an employee so undertook employment at another Chrysler plant, he could return to his "home plant" only under certain conditions. Section 65(b), at 69, also specifically provided: "Employees accepting work under this Subsection (b) shall have no right to return to former plants unless and until they are permanently laid off from the new plant." While employment was diminishing at Chrys-

ler's automobile plants, its military tank plants, including a new plant at Lima, Ohio, were expanding their employment; and plaintiffs, when laid off at automobile plants, took advantage of the contractual opportunity by undertaking employment in a tank plant. (As pertinent here, no employee at the Lima Tank Plant was permanently or indefinitely laid off between March and September 14, 1982.)

Under the 1979 collective bargaining agreement, there was also a "Memorandum of Understanding Work Opportunity" designated as "M-1," which is contained in a separate 1979 booklet, at 122-25, entitled "Letters, Memoranda and Agreements." This memorandum, which was commonly known as "Sadie Hawkins," also affected the work opportunity program. It provided in effect that an employee who had undertaken employment at a new plant under the work opportunity program could at a designated time during a designated year make an irrevocable election to return to his "home plant" if the job to which he would be returning would have otherwise been filled by a new employee, if there would be no adverse effects upon either of the involved plants, and if other conditions were met. The concluding paragraph of this memorandum further provided: "6. The Corporation shall *not* incur any *liability for* claimed *violations* or errors in the administration of this Memorandum of Understanding." Memorandum of Understanding Work Opportunity, at 155 (emphasis added).

Finally, under the 1979 collective bargaining agreement, there was also a letter agreement dated October 25, 1979, signed by Mr. Marc Stepp for defendant Union and by Mr. Thomas W. Miner of defendant Chrysler, designated as "Work Opportunity - Ohio" and "65(n)," which is also contained in the separate 1979 booklet, at 110-11, entitled "Letters, Memoranda and Agreements." This letter agreement, commonly known as the "Ohio letter," also affected the work opportunity program. The Ohio letter is in effect a subsidiary letter agreement to both the 1979 agreement and the Sadie Hawkins memorandum and relates to work

opportunities in other Ohio plants more than fifty miles from the "home plant." The Ohio letter, at 110, provided in effect that an employee who had undertaken employment at a new plant under the work opportunity program could be recalled, prior to the hiring of new employees at the "home plant," "if such a recall . . . [did not] adversely affect the continuous, efficient, and orderly operation of either of the plants involved." The Ohio letter, at 110, also provided that "employees who are laid off from the plant in which they were placed pursuant to the first sentence of this letter shall at the time of such layoff be governed by the provisions of Section (65)(b) of the Production and Maintenance Agreement dated October 25, 1979." The Ohio letter, at 111, further provided "that employees currently on layoff from an Ohio plant will be given forty-five (45) days to make application for work opportunity at other Ohio plants pursuant to this letter." Thus, as with the work opportunity program itself and the Sadie Hawkins memorandum, but for additional reasons, an employee's return to his "home plant" was also not automatic under the Ohio letter.

In an effort to gain some much-needed liquidity towards surviving its financial crisis, defendant Chrysler sold its total ownership shares of Chrysler Defense Inc., which operated its defense plants including the Lima Tank Plant, to General Dynamics; the corporation's name was changed to General Dynamics Land Systems, Inc.; and plaintiffs became General Dynamics, rather than Chrysler, employees. When these events occurred, the 1979 collective bargaining agreement between defendant Union and defendant Chrysler was still in effect.

The 1979 collective bargaining agreement between defendant Union and defendant Chrysler had an expiration date of September 14, 1982. Said agreement initially applied to defendant Chrysler's then "Lima Tank" facility and also to defendant Union's "Local 2075" at that facility. Prior to that expiration date of September 14, 1982, and after defendant General Dynamics' purchase involved here, defendant Union and defendant General Dynamics

entered into an interim agreement by which in effect the substantive terms of the 1979 collective bargaining agreement between defendant Union and defendant Chrysler, with appropriate changes to reflect the ownership changes, were continued until that agreement expired on September 14, 1982.

In the meantime, defendant Union also sought, and also obtained, from each of the two employers a separate letter agreement to provide for the continuation of the specified transfer rights of employees between the two employers through that expiration date. The first such letter agreement was dated May 18, 1982, and was signed by Mr. George W. Chopp for General Dynamics and by Mr. Marc Stepp for the Union. The second such letter agreement was dated June 7, 1982, and was signed by Mr. Thomas W. Miner for Chrysler and by Mr. Marc Stepp for the Union. This June 7, 1982, letter agreement provided in most pertinent parts:

> Interplant transfer rights are limited to plants within each corporation's bargaining units, and the parties agree that such transfers cannot include inter-company transfers from a Chrysler facility to a GDLS facility and vice versa.
>
> . . .
>
> 1. An employee of CDI (now GDLS) who would otherwise qualify for the right to return to a Chrysler Corporation plant based on Section 54(c) or Section 65(b) of the applicable Chrysler-UAW agreements, may exercise the opportunity to return to his former plant if indefinitely laid off by GDLS according to the provisions of said agreements, *on or before September 14, 1982*. Unless indefinitely laid off by that date any such employee shall lose any right to return to Chrysler.
>
> . . .
>
> 4. Between March 12, 1982 and *September 14,*

> *1982*, any employee, if otherwise eligible, may apply only once for such return.
>
> 5. This letter is submitted with the understanding that the UAW has received a similar letter from GDLS covering Chrysler employees who may be indefinitely laid off on or before *September 14, 1982*. The effect of the return of any Chrysler employee to GDLS will be to terminate seniority at Chrysler. However, if a current Chrysler employee returns to GDLS under the terms of this letter and is then laid off from GDLS, such employee may use the credit units in the SUB Plan at Chrysler in accordance with the terms of the Plan.

June 7, 1982, letter (emphasis added).

In the autumn of 1982, defendant Union and defendant General Dynamics negotiated for a new collective bargaining agreement. Thereafter, and following a short strike, a new 1982 collective bargaining agreement between defendant Union and defendant General Dynamics was ratified by the appropriate membership of defendant Union and was then executed and implemented by the parties in September, 1982. This new 1982 collective bargaining agreement between defendant Union and defendant General Dynamics had an effective date of September 27, 1982, and it contained no transfer provisions to facilities of defendant Chrysler.

In the autumn of 1982, defendant Union and defendant Chrysler also negotiated for a new collective bargaining agreement as to defendant Chrysler's then remaining facilities. After those negotiations, the tentative new 1982 collective bargaining agreement between defendant Union and defendant Chrysler was then taken by defendant Union to a ratification vote by the appropriate membership of defendant Union. Defendant Union recommended, reluctantly but realistically, the ratification of this "tentative new short-term agreement" to its membership. In a letter dated September 20, 1982, defendant Union wrote that

the only "alternative . . . to accepting this agreement . . . [was] a prolonged strike . . . [which could] result . . . [in] Chrysler's bankruptcy and the possible loss of your job and tens of thousands of others." This new 1982 agreement was then ratified by that membership. Thereafter, this new 1982 agreement, which was subsequently dated December 10, 1982, was executed and implemented by the parties.

In this new 1982 collective bargaining agreement between defendant Union and defendant Chrysler, all references to defendant Chrysler's former "Lima Tank" facility and also all references to defendant Union's "Local 2075" at that former facility were deleted. Neither the 1982 agreement nor any subsequent agreement between defendant Union and defendant Chrysler covered plaintiffs who were no longer employed by Chrysler.

Referring to this history, the district court in the opinion and order filed on April 16, 1986, subsequently summarized in most pertinent parts as follows:

> Neither of the respective post-September 14, 1982 collective bargaining agreements between GDLS and the UAW and between Chrysler and the UAW provided for inter-corporation work opportunity transfer rights or for cross-national bargaining unit transfer rights. Nor did either of said post-September 14, 1982 agreements expressly or implicitly renew or extend the May 18, 1982 and June 7, 1982 letters of understanding. No plaintiff while working at the Lima, Ohio tank plant was indefinitely laid off either by Chrysler before March 16, 1982 when Chrysler sold CDI to GDLS or by GDLS before September 14, 1982 when both the October 25, 1979 agreement and the aforesaid letters of understanding expressly expired.
>
> . . .
>
> As to employees of the Lima, Ohio tank plant including plaintiffs, the October 25, 1979 collec-

> tive bargaining agreement terminated September 14, 1982. Said termination was in accordance with the express terms of the 1979 agreement and the June 7, 1982 letter of understanding. The Court finds that at some point prior to six months preceding the date on which this lawsuit was commenced, plaintiffs discovered or, in the exercise of reasonable diligence, should have discovered the acts of defendants constituting the violations alleged by plaintiffs. . . . The Court finds that plaintiffs' causes of action accrued and the applicable statute of limitations period began to run when plaintiffs discovered or in the exercise of reasonable diligence should have discovered the agreements between defendants (the May 18, 1984 [sic—1982 intended] and June 7, 1982 letters of understanding and the September 27, 1982 GDLS/UAW agreement) which plaintiffs claim abrogated or extinguished their Chrysler "home plant" recall/seniority rights.

Chrysler Workers Association v. Chrysler Corp., No. C 84-7273, Slip Op. at 22, 27 (N.D. Ohio filed Apr. 16, 1986) (Appendix, at A 55, A 63) ("April 16, 1986, Order").

Defendant Chrysler neither sought nor was willing to reinstate any of plaintiffs in employment in a Chrysler plant where formerly employed. Since its sale of Chrysler Defense, Inc., defendant Chrysler began to accomplish a dramatic economic recovery. Although the changed circumstances inspired plaintiffs to desire a return to Chrysler employment, no plaintiff sustained any legally recoverable damage.

On or about March 23, 1984, the plaintiffs commenced the instant action against eight defendants, which included the Union (the International Union and five of its local unions), General Dynamics, and Chrysler. Each defendant thereafter filed an answer to the subsequently-amended complaint. Each of such answers included a defense in the nature of a general denial and other defenses. Extensive discovery proceedings were then held.

Pursuant to Fed. R. Civ. P. 56, the defendants then filed separate motions for summary judgment and supporting briefs and affidavits. Each defendant advanced more than one position in support of its motion. As to defendant Chrysler's motion, the district court in the opinion and order filed on April 16, 1986, subsequently summarized defendant Chrysler's several positions in the following terms:

> Chrysler asserts that at all times pertinent to this lawsuit, defendant UAW was the exclusive collective bargaining agent for Chrysler's employees including plaintiffs, with which agent and not individual employees, Chrysler was legally required to negotiate those matters which are the subject of this lawsuit. Chrysler further asserts that it lawfully did so negotiate such matters with the UAW. Chrysler maintains that it has fully complied with all of its agreements with the Union which are the subject of this litigation. Chrysler further maintains that since the Union has not unlawfully breached its statutory duty of fair representation as plaintiffs' exclusive collective bargaining agent, plaintiffs cannot maintain this action against either the Union or Chrysler. Chrysler contends that, in any event, plaintiffs' instant hybrid §301/fair representation action is barred by the applicable six month statute of limitations.

April 16, 1986, Order at 12 (Appendix, at A 41). Briefing and related activities then followed.

On April 16, 1986, the district court filed an opinion and order which, among other actions, granted defendant General Dynamics' motion to dismiss and the other defendants' separate motions for summary judgment. April 16, 1986, Order (Appendix, at A 24-A 64). On the following day, April 17, 1986, the court also filed an accompanying judgment. *Chrysler*, No. C-84-7273 (N.D. Ohio filed April 17, 1986) (Appendix, at A 65). Approximately a week later,

April 25, 1986, the court also filed an order amending by interlineation the first sentence of the second full paragraph on page 26 of the opinion and order of April 16, 1986. *Chrysler*, No. C 84-7273 (N.D. Ohio filed April 25, 1986) (Appendix, at A 66).

In the opinion and order filed on April 16, 1986, the district court concluded its detailed analysis of the above-noted material facts with this telling sentence: "The *undisputed* facts demonstrate that plaintiffs' Chrysler home plant return/seniority rights which they enjoyed under the 1979 agreement, terminated September 14, 1982." April 16, 1986, Order at 27 (Appendix, at A 62) (emphasis added). The district court then held that plaintiffs' asserted hybrid §301/fair representation claims as to defendant Chrysler were barred by the applicable six-month statute of limitations. 29 U.S.C. §160(b) (1983). In so holding, the district court stated in part: "Finding the statute of limitations issue to be dispositive of this case, the Court does not substantively reach the merits of the remaining issues presently *sub judice*." April 16, 1986, Order at 20 (Appendix, at A 53).

On April 22, 1986, plaintiffs filed a notice of appeal to the Sixth Circuit. Extensive briefs were then filed with the Sixth Circuit, and oral arguments were thereafter heard by the Sixth Circuit. On November 25, 1987, the Sixth Circuit, in a detailed and thorough opinion, affirmed the district court's judgment. *Chrysler*, 834 F.2d 573 (Appendix, at A 1).

The Sixth Circuit, without agreeing "in all respects" with the district court's analysis of the statute of limitations issue, affirmed the district court's judgment, but the Sixth Circuit so affirmed on additional grounds. 834 F.2d at 581 (Appendix, at A 20). The Sixth Circuit stated that the district court "was not in error . . . in concluding that the New Castle plaintiffs are barred by the statute of limitations in their claim against Chrysler." 834 F.2d at 581 (Appendix, at A 19). The Sixth Circuit then added that "whether or not the statute of limitations constitutes

a bar to a claim under this agreement [the Sadie Hawkins Day agreement], the above [non-liability] language eliminating liability against Chrysler would preclude a claim thereunder." 834 F.2d at 581 (Appendix, at A 19). The Sixth Circuit then affirmed on grounds other than the statute of limitations and held: "Accordingly, we AFFIRM the judgment for all defendants." 834 F.2d at 583 (Appendix, at A 23). On or about December 8, 1987, plaintiffs filed a petition for rehearing, with suggestion for rehearing *in banc*, with the Sixth Circuit. On January 19, 1988, the Sixth Circuit denied that petition. *Chrysler*, No. 86-3361 (6th Cir. filed Jan. 19, 1988) (Appendix, at A 67).

On April 8, 1988, the instant petition for certiorari was served upon defendant Chrysler. On its face, the petition shows no good reason for this Court to review the decision of the Sixth Circuit. For the additional reasons set forth below, review by this Court is neither warranted nor appropriate.

SUMMARY OF ARGUMENT

What has occurred below was the entry of a classic, state-of-the-art summary judgment for defendant Chrysler in the district court. The court of appeals on somewhat different grounds has correctly affirmed that summary judgment. There is no unusual feature in this case to attract or merit the attention of, and further consideration by, this busy Court.

All of the judges below have agreed that the material facts required for determination of this case are undisputed or undisputable. Plaintiffs have been unable to demonstrate the presence of any genuine issues of material fact.

When economic conditions ravaged defendant Chrysler, plaintiffs took advantage of their rights under an appropriate then applicable collective bargaining agreement to gain the opportunity for work at a tank plant. Subsequently, after the economic climate of defendant Chrysler had improved and while plaintiffs continued to work at the tank plant, which had now changed ownership to an-

other employer, plaintiffs desired to return to employment with defendant Chrysler. There was no longer a collective bargaining agreement which accorded plaintiffs a right to return and plaintiffs did not qualify for a right to return under the provisions of even the then expired collective bargaining agreement under which they had undertaken work opportunity.

Plaintiffs filed this action against defendant Chrysler and defendant Union, both of whom had lawfully conducted their collective bargaining relationship. A third defendant, General Dynamics, was initially included in this action, but it was subsequently dismissed. The filing of the action was regarded as tardy (not in compliance with statutory limitations) by the district court. Without completely agreeing with the district court as to tardiness, the court of appeals determined, likewise as a matter of law, that defendant Chrysler was not in violation of its contractual obligations to plaintiffs and was otherwise entitled to judgment. The summary judgment rendered by the district court and its affirmance by the court of appeals were both legally correct.

Like plaintiffs' efforts to develop genuine issues of material fact, plaintiffs' attempts to challenge the applicable law are faulty and have correctly been so held below. It is more than time for the judicial process to end as to this dispute. Certiorari should be denied.

ARGUMENT - REASONS FOR DENYING THE PETITION

As to defendant Chrysler, all of the pertinent circumstances were carefully considered and determined by both the district court and the court of appeals. Additionally, well-settled principles of law also govern all of the matters set forth in the petition as to defendant Chrysler. The applicability of those principles here is heavily underscored by the entire record in the instant action. Those principles display that the decision of the court of appeals in affirming judgment for defendant Chrysler was correct and proper. As to defendant Chrysler, this is simply not the

type of case that either demands or requires this Court's precious time. For the additional reasons set forth below, the petition should be denied.

I. NEITHER THE DISTRICT COURT NOR THE COURT OF APPEALS WAS REQUIRED TO PRESUME THAT THERE WAS A "GENUINE ISSUE AS TO ANY MATERIAL FACT" WHICH PRECLUDED SUMMARY JUDGMENT.

Rule 56 of the Federal Rules of Civil Procedure provides in most pertinent parts:

> The judgment sought *shall be rendered forthwith* if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment *as a matter of law.*

Fed. R. Civ. P. 56(c) (emphasis added).

> When a motion for summary judgment is made and supported as provided in this rule, *an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading,* but the adverse party's response, by affidavits or as otherwise provided in this rule, *must* set forth *specific* facts showing that there is a genuine issue for trial. If the adverse party does not so respond, *summary judgment,* if appropriate, *shall be entered against the adverse party.*

Fed. R. Civ. P. 56(e) (emphasis added).

In addition to the language of Fed. R. Civ. P. 56 itself, three recent decisions by this Court interpreting Fed. R. Civ. P. 56 have further underscored the propriety of the judgment here. Each of these three decisions involved the reversal of a decision by a court of appeals, which had reversed a decision granting summary judgment by a district court. Each of these three decisions is noted briefly below.

In early 1986, this Court decided *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574 (1986), a complex antitrust conspiracy case in which even the statement of the facts was "a daunting task." 475 U.S. at 576. As most pertinent here, this Court stated:

> To survive petitioners' [defendants'] motion for summary judgment, respondents [plaintiffs'] must establish that there is a genuine issue of material fact. . . .
>
> Second, the issue of fact must be "genuine." Fed. Rules Civ. Proc. 56(c), (e). When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the nonmoving party must come forward with "specific facts showing that there is a *genuine issue for trial.*" Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for trial."

475 U.S. at 585-86 (emphasis in original).

Several months later in 1986, this Court decided *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), "which involved the question whether the clear-and-convincing-evidence requirement [for actual malice in a libel suit] must be considered by a court ruling on a motion for summary judgment under Rule 56." 477 U.S. at 244. As most pertinent here, this Court stated:

> By its very terms, this standard [of Fed. R. Civ. P. 56(c)] provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.
>
> As to materiality, the substantive law will identify which facts are material. Only disputes over

> facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . .
>
> . . .
>
> . . .The movant has the burden of showing that there is no genuine issue of fact, but the plaintiff is not thereby relieved of his own burden of producing in turn evidence that would support a jury verdict. Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.

Id. at 247-48, 256 (emphasis in original). In the instant action, the Sixth Circuit also carefully considered this decision. *Chrysler*, 834 F.2d at 578 (Appendix, at 13).

On the same day, this Court also decided *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), where, after the plaintiff "was unable to produce evidence in support of her allegation in her wrongful-death complaint that the decedent had been exposed to petitioner's asbestos products. . .," a divided panel of a court of appeals held "petitioner's failure to support its motion with evidence tending to *negate* such exposure precluded the entry of summary judgment in its favor." 477 U.S. at 319 (emphasis in original). This Court then reversed. As most pertinent here, this Court stated:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. . . .

. . .

> . . .Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action." Fed. Rule Civ. Proc. 1. . . . *Rule 56 must be construed with due regard* not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but *also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis.*

Id. at 322, 327 (emphasis added).

Under all of the present circumstances, an exhaustive recapitulation is not needed. Here, the claims which plaintiffs have attempted to assert against defendant Chrysler have been made from whole cloth. Fortunately, however, an expensive, time-consuming, and unwarranted trial of this meritless action is not required. The plaintiffs simply could not make "genuine" issues of "material" facts from their whole cloth to preclude judgment. Unsubstantiated, self-serving declarations and the like are not sufficient substitutes for "genuine issue[s] as to any material fact." Similarly, and also contrary to plaintiffs' transparent assertions, disputes over incidental and insignificant matters, which occur in virtually all litigation, are not controlling.

In the instant action, neither the district court nor the court of appeals was required to presume that there was a "genuine issue as to any material fact" which precluded judgment for the defendants. Before the district court and the court of appeals, defendants established that they were entitled to judgment, and plaintiffs completely and totally failed to establish otherwise. In so failing, plaintiffs have already taken more than their share of the resources and

energies of the judicial system and their opposing litigants. By the petition, this Court, although already needlessly and unjustifiably burdened by plaintiffs, now has an opportunity to promote further the interests and administration of justice by endorsing the usages of the judicial procedures used by both the district court and the court of appeals. This Court should now take full advantage of this opportunity by declining further review of the decisions below.

II. AFTER A DISTRICT COURT HAS HELD THAT A LIMITATIONS STATUTE BARS PLAINTIFFS' ASSERTED CLAIMS AGAINST A DEFENDANT AND HAS ENTERED SUMMARY JUDGMENT IN FAVOR OF THAT DEFENDANT AND A COURT OF APPEALS, WITHOUT AGREEING IN ALL RESPECTS WITH THE DISTRICT COURT'S ANALYSIS OF THE LIMITATIONS ISSUE, CORRECTLY AFFIRMS THAT JUDGMENT ON THE ADDITIONAL GROUNDS THAT DEFENDANT HAS NOT BREACHED ITS CONTRACT UPON WHICH THE PLAINTIFFS' ASSERTED CLAIMS WERE BASED AND IS OTHERWISE ENTITLED TO JUDGMENT, THERE IS NO NEED FOR FURTHER REVIEW BY THIS COURT.

As demonstrated previously, plaintiffs' asserted claims as to defendant Chrysler are hybrid §301/fair representation claims. With respect to hybrid §301/fair representation claims, it is now well established that a plaintiff is required to establish both a breach of the contract by the employer and a breach of the duty of fair representation by the union to impose liability on either the employer or the union. For example, in *Hines v. Anchor Motor Freight*, 424 U.S. 544 (1976), this Court, in clarifying additionally prior holdings, stated in pertinent part:

> To prevail against either the company or the Union, petitioners must not only show that their discharge was *contrary to the contract* but must *also* carry the burden of demonstrating *breach of*

> *duty* by the Union. As the District Court indicated this involves more than demonstrating mere errors in judgment.

Id. at 570-71 (emphasis added). More recently, in *DelCostello v. Teamsters*, 462 U.S. 151 (1983), this Court again dealt with these principles. There, in concluding that the federal statutory six-month statute of limitations governed hybrid §301/fair representation actions, this Court also reiterated:

> Such a suit, as a formal matter, comprises two causes of action. The suit against the employer rests on §301, since the employee is alleging a breach of the collective bargaining agreement. The suit against the union is one for breach of the union's duty of fair representation, which is implied under the scheme of the National Labor Relations Act. "Yet the two claims are inextricably interdependent. . . ." *Mitchell, supra*, at 66-67. . . . The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both.

Id. at 164-65.

To have a valid hybrid §301/fair representation claim, then, it is not sufficient for a plaintiff to establish just one essential element or the other essential element; a plaintiff must establish both essential elements to impose liability on either the employer or the union. And, of course, if both essential elements are not established, as here, there can be no liability against either the employer or the union.

When such governing legal principles are coupled with the entire record in the instant action, the complete absence of any need for further review by this Court becomes, if possible, even more clear. Only several points will be reiterated here.

The district court, in concluding its detailed analysis of the material facts, determined that the decisive facts were "undisputed." April 16, 1986, Order at 27 (Appendix, at A 62). The district court then held that plaintiffs' asserted hybrid §301/fair representation claims as to defendant Chrysler were barred by the applicable six-month statute of limitations and did not reach other substantive issues. 29 U.S.C. §160(b) (1983).

As stated previously, the Sixth Circuit, without agreeing "in all respects" with the district court's analysis of the statute of limitations issue, affirmed the district court's judgment, but the Sixth Circuit so affirmed on additional grounds. As most pertinent here, the Sixth Circuit stated in part:

> As to defendant Chrysler, we are not prepared to affirm the district court's conclusion that the six months statute of limitation barred plaintiffs' claims *in all respects*. We find another basis, however, for affirming the judgment for defendant Chrysler—the plaintiffs' concession that there is no cause of action:
>
> > The Plaintiffs would only reiterate that if in fact this Court finds that the Plaintiffs' recall/seniority rights were eliminated in 1982 either because of the secret May and June, 1982 letter agreements or as a matter of law because of the alleged expiration of the 1979 Agreement, the Plaintiffs have no cause of action whatsoever against Chrysler Corporation for breach of contract.
>
> Plaintiffs Reply Brief at 11.
>
> We conclude, *under all the circumstances*, that *the district court reached a correct result in rendering a judgment for Chrysler*.
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> . . .
>
> Our decision to affirm judgment for Chrysler is not based upon the district court's statute of

> limitations determination. . . . We have simply determined that *the record established that Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights*, and that neither Chrysler nor the UAW have fraudulently concealed from plaintiffs their asserted causes of action.

Chrysler, 834 F.2d at 581-82 (Appendix, at A 20-A 22) (emphasis added).

In view of all of the foregoing, it is clear beyond cavil that the district court's judgment was correctly and properly affirmed by the court of appeals on the additional grounds that defendant Chrysler has not breached its contract upon which the plaintiffs' asserted claims were based and is otherwise entitled to judgment. For these reasons alone, and there are more, there is no need, either real or imagined, for further review by this Court.

III. AFTER BOTH A DISTRICT COURT AND A COURT OF APPEALS HAVE FULLY EXAMINED AND CONSIDERED PLAINTIFFS' ASSERTED CLAIMS AND HAVE RENDERED DETAILED AND THOROUGH DECISIONS ADVERSE TO PLAINTIFFS, THIS COURT SHOULD NOT BE PERSUADED EITHER BY UNSUPPORTED AND UNSUPPORTABLE ARGUMENTS OR BY MEANINGLESS ARGUMENTS TO PERMIT FURTHER REVIEW AND THEREBY UNNECESSARILY TO BURDEN FURTHER ITS HEAVY DOCKET.

Since the basic reasons and authorities why defendant Chrysler was entitled to judgment in the district court have previously been set forth either by that court or by the Sixth Circuit, or by both of them, and also in this brief and remain unimpaired by the petition, those matters need not again be reiterated. Instead, this section of this brief will be confined to responding to the petition and only to those points which might possibly suggest any desirability of any response at all. So structured, this section of this brief will also not attempt to treat each and

every irrelevancy, transparency, and the like in the petition, which, in the absence of a requirement to do so, would only unduly and needlessly burden the Court.

Plaintiffs have advanced essentially the same arguments which were rejected either by the district court or by the Sixth Circuit, or by both of them. In the petition, such arguments are styled under four headings. Of plaintiffs' four arguments, the first and fourth relate to questions not necessary for decision by this Court, the second relates to a question not involving defendant Chrysler, and the third merely reflects the plaintiffs' meritless dissatisfaction and disgruntlement with the Sixth Circuit at having received another adverse decision. Each of these four arguments will be noted briefly below.

First, plaintiffs argue that the applicable six-month statute of limitations for their asserted hybrid §301/fair representation action should be tolled pending exhaustion of internal union grievance procedures. Petition, at 12-17. In effect, plaintiffs seek to render the applicable six-month statute of limitations a nullity.

Plaintiffs cite several decisions in which a possible "Catch-22" was mentioned. For numerous and various reasons, plaintiffs' argument should be rejected here.

Plaintiffs continue to fail to confront the fact that, if they had wanted to pursue their asserted hybrid §301/fair representation action and internal union grievance procedures, they were required to have done so in a proper and timely fashion, but that they did not do so. In language fully applicable here, this Court reiterated in *Electrical Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 237 n. 10 (1976), "in no way is this a situation in which a party has been prevented from asserting his or her rights." If plaintiffs had really been concerned about being so caught by a "Catch-22," they could simply have filed their asserted hybrid §301/fair representation action within the required statutory period and then have sought, if necessary, a brief stay of the same while exhausting their required internal union grievance procedures. Under

§101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §411(a)(4)(1983), such internal union grievance procedures cannot be delayed "to exceed a four-month lapse of time." Such an alternative course would not only be in accordance with the applicable federal policy for the prompt resolution of labor disputes, but it would also encourage further the prompt resolution of internal union disputes through private means rather than through additional crowding of judicial dockets and would otherwise enhance the efficacy of both internal union grievance procedures and judicial procedures as to all such purported claims. *See also NLRB v. Marine Workers*, 391 U.S. 418, 426, 426 n. 8 (1968), where this Court stated that 29 U.S.C. §411(a)(4) (1983) is "a statement of policy that the public tribunals whose aid is invoked may in their discretion stay their hands for four months, while the aggrieved person seeks relief within the union . . ." and that "federal courts . . . often stay their hands while a litigant seeks administrative relief before the appropriate agency . . . [and] the requirement of exhaustion is a matter within the sound discretion of the courts."; *Johnson v. Railway Express Agency*, 421 U.S. 454, 465-66 (1975), where this Court, holding that the timely filing of a charge with the EEOC pursuant to Title VII (42 U.S.C. §2000e-5 (1983)) did not toll the running of the statute of limitations under 42 U.S.C. § 1981 (1983), stated, as to plaintiff's arguments that he would be compelled to take inconsistent and prejudicial positions, "that plaintiff in his § 1981 suit may ask the court to stay proceedings until the administrative efforts at conciliation and voluntary compliance [under Title VII] have been completed . . . [and] no policy reason [exists] that excuses petitioner's failure to take the minimal steps necessary to pursue each claim independently." Plaintiffs did not follow, and do not purport to have followed, such an alternative course here.

On its own foundation, then, plaintiffs' belatedly and hastily constructed "Catch-22" facade simply will not stand here. In any event, the Sixth Circuit did not base its

decision on plaintiffs' asserted arguments as to tolling, or indeed even on the statute of limitations. 834 F.2d at 582 (Appendix, at A 21).

Plaintiffs' tolling argument is, of course, also directly contrary to one of the leading federal labor policies, which is to promote the prompt resolution of labor disputes. *See, e.g., Auto Workers v. Hoosier Corp*, 383 U.S. 696, 707 (1966), where this Court stated that "the six months' provision governing unfair labor practice proceedings 61 Stat. 146, 29 U.S.C. §160(b), suggests that relatively rapid disposition of labor disputes is a goal of federal labor law."; *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 63 (1981), where this Court stated "that the unfair representation claim made by an employee against his union even though his employer may ultimately be called upon to respond in damages for it if he is successful, is more a creature of 'labor law' as it has developed since the enactment of §301 than it is of general contract law ... [and] one of the leading federal policies in this area is the 'relatively rapid disposition of labor disputes'."; *DelCostello v. Teamsters*, 462 U.S. 151, 155 (1983), where this Court followed this principle in a hybrid §301/unfair representation action and held that the six-month provision of "§10(b) should be the applicable statute of limitations governing the suit, both against the employer and against the union." In addition, since defendant Chrysler has no control whatsoever as to those averred internal union grievance procedures, it would be singularly inappropriate (and also most unfair) to permit such argued tolling against defendant Chrysler.

Moreover, and as demonstrated previously, since there were no contractual (or other) violations by defendant Chrysler, there could not be a valid hybrid §301/fair representation claim here. *See DelCostello v. Teamsters*, 462 U.S. 151, 164-65 (1983); *Hines v. Anchor Motor Freight*, 424 U.S. 554, 570-71 (1976).

For all of the above-stated reasons, plaintiffs' tolling argument should be rejected. In any event, plaintiffs' toll-

ing argument is meaningless here, since, as demonstrated previously, the Sixth Circuit's decision, in unmistakable language, was based on other grounds: "Our decision to affirm judgment for Chrysler is not based upon the district court's statute of limitations determination." 834 F.2d at 582 (Appendix, at A 21).

Second, plaintiffs argue that they were denied Fifth Amendment procedural due process as to their purported "causes of action for breach of duty of fair representation founded on Section 9 of the National Labor Relations Act, 29 U.S.C. §159 (separate and apart from any §301 breach of contract claim), and the plaintiffs' right to vote, pursuant to Section 101 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §411, et seq. . . ." in that said causes were not adjudicated. Petition, at 18-22. In denying plaintiffs' petition for a rehearing, the Sixth Circuit stated in part: "The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case." *Chrysler*, No. 86-3361 (6th Cir. filed January 19, 1988) (Appendix, at A 67). In any event, plaintiffs' second argument does not aver any claims against defendant Chrysler, and any additional comments by defendant Chrysler as to this second argument would be both inappropriate and unwarranted.

Third, plaintiffs argue that the Sixth Circuit erred "when it held that defendant Chrysler Corporation did not violate its contractual responsibilities with respect to the Ohio plaintiffs' claimed transfer rights." Petition, at 22-26. The underlying faulty premises of this argument by plaintiffs have been previously exposed in this brief and elsewhere. Only a few comments, if indeed any, are appropriate with respect to such argument here.

As far as defendant Chrysler was concerned, defendant Union, as plaintiffs' "exclusive" collective bargaining agent, had both actual authority and apparent authority at all times as to all matters pertinent to this action. *See* 29 U.S.C. §159(a) (1983). *See also e.g., Emporium Capwell Co.*

v. Community Organization, 420 U.S. 50 (1975); *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), *reh'g denied*, 389 U.S. 892 (1967); *Medo Corp. v. Labor Board*, 321 U.S. 678 (1944); *J. I. Case Co. v. Labor Board*, 321 U.S. 332 (1944). In addition, the Sixth Circuit properly and correctly stated:

> Chrysler had every reason to believe its position was made known. . . .
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> . . .
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> . . .In the context of the economic conditions then faced by Chrysler and the sale of its defense unit to a new and unrelated employer in early 1982, we find the arrangement worked out by UAW with Chrysler and with GD, the purchaser of the Lima plant, as a matter of law to constitute neither a conspiracy nor a fraud operating against the interests of former Chrysler employees. . . . There was no "affirmative" act of concealment.
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> . . .In any event, we find that Chrysler had a right to rely upon its agreement with the Union absent clear notice that the Union was acting in bad faith against the interests of its members. There is no such indication here.
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> . . .[T]he record established that Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights, and that neither Chrysler nor the UAW have fraudulently concealed from plaintiffs their asserted causes of action.

834 F.2d 579, 581-82 (Appendix, at A 14, A 20-A 22).

In apparent recognition of the fatal flaws in this third argument, plaintiffs then also argue that "the Sixth Circuit did not consider the intent of the drafters of the letters of understanding." In view of the numerous and repeated references to "September 14, 1982," in each of the two letters of understanding, the "intent" of the parties to each could hardly have been more clear. Even so, plaintiffs

also grudgingly recognize, as they must, that the Sixth Circuit did "consider the intent of the drafters." Petition, at 24. In discussing plaintiffs' arguments, and also in rejecting them, the Sixth Circuit specifically referred to "intent" and stated: "Plaintiffs argue that the 1982 letter agreements were not *intended* to alter the 1979 CBA." 834 F.2d at 581 (Appendix, at A 17) (emphasis added). And, of course, such reference to "intent" does not stand alone, but rather it appears within a comprehensive analysis by the Sixth Circuit.

Despite all of the foregoing (or, perhaps because of all of the foregoing), plaintiffs still suggest that there was not enough reported analysis by the Sixth Circuit as to "intent" in terms of such factors as the "context" which gave rise to these two letter agreements and the "actions" of the parties thereunder. Petition, at 25. Even with lengthy and thorough opinions, such as those rendered here by both the district court and the Sixth Circuit, a court cannot be expected to detail all of the minutiae as to each and every issue, or supposed issue, which it has considered. If the Sixth Circuit would have written still more as to "intent" in terms of such stated factors as "context" and "actions," such additional details would have only further underscored the correctness of its decision that "under *all* the circumstances . . . the district court reached a correct result in rendering a judgment for Chrysler." 834 F.2d at 581 (Appendix, at 20) (emphasis added). Plaintiffs' inappropriate and unwarranted suggestions that such additional burdens must be assumed by an ever-increasingly busy judiciary should be quickly rejected in any event.

Fourth, plaintiffs argue that they were entitled to a jury trial as to certain of their averred causes. Petition, at 26-30. Both the district court and the Sixth Circuit have held that defendants were entitled to summary judgment. As a result, plaintiffs' argument, even if it were otherwise valid, raises only moot issues now. Consequently, it is not necessary now to determine whether or not plaintiffs would have otherwise been entitled to a jury trial on these av-

erred causes. Defendants were properly granted summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574 (1986). The Sixth Circuit correctly and properly affirmed that judgment.

When, as here, both a district court and a court of appeals have fully examined and considered plaintiffs' asserted claims and have rendered detailed and thorough decisions adverse to plaintiffs, this Court should not be persuaded either by unsupported and unsupportable arguments or by meaningless arguments to permit further review and thereby unnecessarily to burden further its heavy docket. Under these circumstances, further review is neither warranted nor appropriate, and it should be declined.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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May 9, 1988

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the petition and appendix herein were received for respondent Chrysler Corporation by priority mail on April 8, 1988, and that three copies of the foregoing brief have been mailed first class postage prepaid this 9th day of May, 1988, to Gordon A. Senerius, Esq., counsel of record for petitioner herein, at his office at 3450 West Central, Suite 336, Toledo, Ohio 43606, and also to Gerald B. Lackey, Esq., counsel of record for respondent unions herein, at his office at Lackey, Nusbaum, Harris, Reny & Torzewski, L.P.A., Two Maritime Plaza, Third Floor, Toledo, Ohio 43604.

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